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Limited

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANCHOR HOLDINGS LIMITED, an
English Limited Company,

Plaintiff,

v.

UPPER EAST SIDE SUITES LLC, a
Delaware Limited Liability Company,
BENEDETTO CICO, an individual, and
CARLA CICO, an individual.

Defendants.

**CASE NO. 2:15-cv-05447-MMM-
FFM**

**PLAINTIFF ANCHOR HOLDINGS
LIMITED'S RESPONSE TO
ORDER TO SHOW CAUSE
REGARDING DISMISSAL FOR
LACK OF PROSECUTION**

Plaintiff Anchor International Holdings Limited ("Anchor" or "Plaintiff"), by and through its attorneys Kelley Drye & Warren LLP, hereby submits the following response to the Court's Order to Show Cause Regarding Dismissal for Lack of Prosecution, Dkt. No. 16 ("Order to Show Cause"). For the reasons set forth herein, dismissal at this time for lack of prosecution would be inappropriate because Plaintiff is still in the process of effecting international service upon Defendant Carla Cico, and has concurrently filed herewith an application for entry of default by the Clerk of this Court against Defendants Upper East Side Suites LLC and

1 Benedetto Cico as directed in the Order to Show Cause and as required by Rule
2 55(a). Therefore, Anchor respectfully submits that good cause exists for this action
3 to proceed, and that dismissal for lack of prosecution is inappropriate at this time.

4 The instant litigation was commenced by Anchor against Defendants Upper
5 East Side Suites LLC (“UESS”), Benedetto Cico, and Carla Cico (collectively,
6 “Defendants”) on July 17, 2015. *See* Complaint, Dkt. No. 1. Anchor is an aggrieved
7 minority member of Defendant UESS, a Delaware limited liability company with its
8 principal place of business in California. *See id.*, at ¶¶ 13, 16. Defendants
9 Benedetto and Carla Cico are Co-Managers of UESS. *See id.*, at ¶¶ 14, 15. Anchor
10 generally alleges that Benedetto and Carla Cico, in their separate capacities, grossly
11 mismanaged UESS, and engaged in conduct that breached UESS’ Operating
12 Agreement and fiduciary duties owed to Anchor and other members of UESS. *See*
13 *generally, id.* Anchor seeks various forms of relief against all three Defendants.

14 Defendants UESS and Benedetto Cico reside in the state of California and
15 were duly served with the Summons and Complaint on August 12, 2015 at the same
16 address. *See* Proofs of Service, Dkt. Nos. 9, 10. UESS and Benedetto Cico were
17 required to answer the Complaint on or before September 3, 2015. *See id.* As
18 directed by the Order to Show Cause, Anchor has concurrently herewith filed a
19 Request for the Entry of Default by the Clerk of this Court, along with then
20 necessary supporting documentation as required by Federal Rule of Civil Procedure
21 55(a). Anchor respectfully requests that, upon entry of default by the Clerk, the
22 Court allow for sufficient time of at least thirty days, or until Proof of Service upon
23 Carla Cico is obtained, for Anchor to prepare a motion for the entry of default
24 judgment by the Court pursuant to Federal Rule of Civil Procedure 55(b), for
25 amendment of the Complaint in light of any newly discovered facts, or for entry of a
26 stay to allow settlement discussions to proceed.

27 Defendant Carla Cico is an individual who resides in Verona, Italy. *See*
28

1 Complaint, ¶ 15. Service upon Carla Cico is in progress but not yet complete.
2 While the 120-day period for service prescribed by Federal Rule of Civil Procedure
3 4(m) has not yet passed, and will not pass until November 14, 2015, that limitation
4 does not apply to service upon an individual in a foreign country pursuant to Rule
5 4(f). *See* Fed. R. Civ. P. 4(m) (“This subdivision (m) does not apply to service in a
6 foreign country under Rule 4(f).”). Anchor’s counsel has engaged APS
7 International, Ltd. (“APS”) to effect service of process upon Carla Cico in
8 accordance with the Hague Convention on the Service Abroad of Judicial &
9 Extrajudicial Documents in Civil or Commercial Matters. *See* Declaration of James
10 B. Saylor in support of Response to Order to Show Cause, ¶ 3. APS has informed
11 Anchor’s counsel that although Italian government officials are in receipt of the
12 necessary documents, it can take several weeks for those officials to effect service
13 pursuant to international treaty law. *Id.*, at ¶ 4. Following this, APS advised that
14 Italian government officials could take several more weeks to complete proof of
15 service and return that documentation to the United States. *Id.* While the time it
16 takes for this process to complete is out of the control of Anchor, its counsel, and
17 APS, APS has represented its most hopeful estimated date for receipt of proof of
18 service to be sometime in November 2015. *Id.* Anchor’s counsel will file such
19 proof of service as soon as it is received.

20 In light of Plaintiff Anchor’s active participation in the case as described
21 above, dismissal for lack of prosecution is inappropriate at this time.
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1 DATED: September 28, 2015

Respectfully Submitted,

2 KELLEY DRYE & WARREN LLP

3 Richard F. DeLossa (STATE BAR NO. 245181)

4 James B. Saylor (admitted *pro hac vice*)

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6 By //s// James B. Saylor

7 Attorneys for Anchor Holdings, Ltd.
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th date of September 2015, the foregoing document and all supporting papers were served via electronic mail on the following Parties:

Upper East Side Suites, LLC
201 Stuyvesant Drive
San Anselmo, CA 94960
Email: cico@usabound.com

Benedetto Cico
201 Stuyvesant Drive
San Anselmo, CA 94960
Email: cico@usabound.com

//s// James B. Saylor

James B. Saylor